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October 2, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57; Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184; Media Bureau Seeks Comment on Interpretation of the Terms “Multichannel Video Programming Distributor” and “Channel” as Raised in Pending Program Access Complaint Proceeding, MB Docket No. 12-83***

Dear Ms. Dortch:

On September 30, 2014, David L. Cohen, Executive Vice President of Comcast Corporation (“Comcast”), and the undersigned met with Commissioner Rosenworcel and Clint Odom to discuss Comcast’s transaction with Time Warner Cable Inc. (“TWC”) and related exchange of systems with Charter Communications, Inc. (collectively, the “Transaction”).<sup>1</sup> We emphasized its many compelling pro-consumer and pro-competitive benefits, as detailed in Applicants’ public interest filings,<sup>2</sup> including: accelerated digital upgrades for the acquired systems; accelerated deployment of some of the industry’s fastest broadband speeds, best-in-class video technology and user interface, the most robust and advanced video on-demand and TV Everywhere experience, and next-generation advertising technologies; enhanced competition in the business services market; extension of Comcast’s leading diversity, accessibility, and community outreach programs; and expansion of Comcast’s acclaimed *Internet Essentials* broadband adoption program. As explained in Applicants’ Opposition and Response, the public interest benefits of the Transaction are largely undisputed, with

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<sup>1</sup> See *Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, 29 FCC Rcd. 8272 (2014).

<sup>2</sup> See *Applications and Public Interest Statement of Comcast Corporation and Time Warner Cable Inc.*, MB Docket No. 14-57 (Apr. 8, 2014); *Public Interest Statement of Comcast Corporation and Charter Communications Inc., Charter-to-Comcast Exchange Transaction*, MB Docket No. 14-57 (June 4, 2014); *Public Interest Statement of Charter Communications, Inc. and Comcast Corporation, Comcast-to-Charter Exchange and Sale Transactions*, MB Docket No. 14-57 (June 4, 2014); *Public Interest Statement of SpinCo, Charter Communications, Inc., and Comcast Corporation, Spin Transaction*, MB Docket No. 14-57 (June 4, 2014).

no commenter meaningfully challenging them.<sup>3</sup> The record is replete with hundreds of letters and comments from a wide range of supporters that attest to these transaction-specific public interest benefits.<sup>4</sup>

We also addressed concerns raised in the record regarding broadband competition and the impact of the Transaction on the broadband marketplace. As a preliminary matter, we noted that there is no national broadband “market” and that the correct relevant geographic market is *local*. An assessment of broadband competition must focus on whether there is any reduction of competitive choices for consumers, and consumers do not choose broadband providers at the national level. Because Comcast and TWC serve almost entirely distinct geographic areas and do not compete in any relevant market for Internet access services, the Transaction will in no way reduce broadband competition or the number of broadband choices available to consumers.<sup>5</sup>

Moreover, we noted that the broadband marketplace is competitive and dynamic and is becoming increasingly so, with consumers enjoying ample and growing choices of broadband providers. To artificially constrain the broadband market by excluding certain technologies like DSL and wireless or by increasing the baseline speed threshold to 25 Mbps would ignore marketplace realities and paint an incomplete picture of the competitive landscape. We explained that DSL and wireless do meet some consumers’ broadband needs for some uses, even if these technologies are not yet perfect substitutes for all consumers. DSL technology is capable of the speeds necessary to offer robust competition to cable and fiber broadband, and will increasingly do so as the technology continues to develop. And wireless broadband, which has experienced staggering growth, is unquestionably at least a partial substitute for many consumers (and a full substitute for some, as the broadband survey Applicants have submitted into the record clearly shows), and will undoubtedly provide even more competition in the future.<sup>6</sup> There are many such competitive broadband options that consumers currently have *and use* in the local markets where the combined company will operate, including the DSL and wireless services that some commenters would have the Commission assume away.

Even if one were to ignore the record evidence and assume a national broadband “market” with a baseline speed of 10 or 25 Mbps, we noted that the Transaction would still present no issues. At a 10 Mbps threshold, the combined company share will be 40 percent of fixed connections and 22.5 percent of fixed and wireless connections.<sup>7</sup> And at a 25 Mbps threshold, the combined company’s broadband share would increase *by less than 1 percent* (due to the very small number of TWC customers

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<sup>3</sup> See Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57 (Sept. 23, 2014) (“Opposition and Response”); see also *id.*, Exhibit 1, Reply Declaration of Dr. Mark A. Israel ¶ 208; *id.*, Exhibit 3, Declaration of Dr. Dennis Carlton ¶¶ 5-8.

<sup>4</sup> See Opposition and Response at 4-12.

<sup>5</sup> See *id.* at 116-21, 145.

<sup>6</sup> See *id.* at 122-33.

<sup>7</sup> Using the most recent Commission data and the Commission’s currently applicable definition of broadband service, Comcast’s post-transaction share of fixed broadband connections will be 35.5 percent, and, when wireless broadband connections are considered, will be as low as 15.3 percent. See Letter from Kathryn A. Zachem, Comcast, et al. to Marlene H. Dortch, FCC, at 5 (June 27, 2014); see also Opposition and Response at 146.

receiving speeds of 25 Mbps or higher). Such a *de minimis* increase is hardly troubling and provides no basis to allege any transaction-specific harm.<sup>8</sup>

With regard to the video programming marketplace, we stated that the combined company's share of managed residential subscribers will be below the prior 30 percent cap under the Commission's twice-rejected horizontal ownership rules.<sup>9</sup> And in today's fiercely competitive video distribution marketplace, content providers enjoy significant bargaining leverage, as evidenced by rising programming costs that are ultimately borne by consumers.<sup>10</sup> In light of this, we explained that it was important for Comcast to point out that programmers' demands and proposed conditions in this proceeding would cost Comcast upwards of \$5 billion above any reasonable projection of its programming costs over the next few years, and could result in per-customer rate increases above \$4 per month.<sup>11</sup>

Despite these claims of alleged harm advanced by certain programmers, we highlighted the fact that the majority of programmers who submitted comments in the docket filed in favor of the Transaction, and the record demonstrates that Comcast is a strong supporter of diverse and independent programmers. Today, Comcast carries more than 100 cable networks that provide programming of interest to Hispanic/Latino, African-American, Asian-American, and female audiences.<sup>12</sup> All told, Comcast carries over 160 independent networks, and six of every seven networks carried by Comcast are unaffiliated with the company. Since 2011, Comcast has added 20 independent networks and over the last four years has substantially expanded carriage of over 141 independent networks by 217 million subscribers, collectively.<sup>13</sup> The Transaction will extend and expand Comcast's commitment to diverse and independent programming.

Separate from the Transaction, we also discussed and referred Commissioner Rosenworcel to the comments recently filed by Comcast in the Commission's E-rate proceeding.<sup>14</sup> In addition, as to any potential Commission action regarding the interpretation of "Multichannel Video Programming Distributors" ("MVPDs") and online video distributors ("OVDs"),<sup>15</sup> we stressed that there are a

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<sup>8</sup> Opposition and Response 146-47 & n.454.

<sup>9</sup> See *Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009); *Time Warner Entm't Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001).

<sup>10</sup> Comcast's per-subscriber programming costs have increased by over 120 percent between 2004 and 2013, significantly outpacing increases in Comcast's prices to customers. See Opposition and Response at 292.

<sup>11</sup> *Id.* at 149-50.

<sup>12</sup> This includes dozens of cable networks geared toward the Hispanic/Latino community, 14 geared to the African-American community, 28 geared to the Asian-American community, and 22 cable networks focused on women. *Id.* at 96-97.

<sup>13</sup> See *id.* at 96-104.

<sup>14</sup> See Comments of Comcast Corporation, WC Docket No. 13-184 (Sept. 15, 2014); *Modernizing the E-rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8870 (2014).

<sup>15</sup> See *Media Bureau Seeks Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding*, Public Notice, 27 FCC Rcd. 3079 (2012); see also "Permit But Disclose" *Ex Parte* Procedures Established for Docket Seeking Comment on

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number of complex issues for the Commission to consider, and we noted that defining OVDs as MVPDs would confer obligations as well as benefits on these entities.

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President,  
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Comcast Corporation

cc: Clint Odom